

**GOOGLE\_LEE**  
**09/13/05 PI Hearing Trans FINAL**  
9/13/2005

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 COUNTY OF KING

3 -----

4 MICROSOFT, )

5 PLAINTIFF, )

6 ) NO. 05-2-23561-6 SEA

7 VS. )

8 GOOGLE AND KAI-FU LEE, )

9 DEFENDANTS. )

10 -----

11 VERBATIM REPORT OF PROCEEDINGS

12 JUDGE'S ORAL RULING ON PRELIMINARY INJUNCTION

13 -----

14 THE HONORABLE STEVEN GONZALEZ

15 SEATTLE, WASHINGTON

16 SEPTEMBER 13, 2005

17 APPEARANCES:

18 FOR PLAINTIFF: KARL QUACKENBUSH

19 JEFF JOHNSON

20 THOMAS BURT

21 FOR DEFENDANT GOOGLE: JOHN KEKER

22 RAGESH TANGRI

23 FOR DEFENDANT LEE: BRADLEY KELLER

24

25 REPORTED BY: APRIL LAINE

1 (IN OPEN COURT:)

2 THE COURT: FIRST, BEFORE I SUMMARIZE  
3 THE PRELIMINARY INJUNCTION, WHICH I AM  
4 ISSUING TODAY, I WANT TO SAY I'VE RECEIVED A  
5 NUMBER OF SUBMISSIONS FROM PEOPLE WHO ARE NOT  
6 PARTIES TO THIS CASE; SOME OF THEM  
7 COMPLIMENTARY, SOME OF THEM CRITICAL, JUST  
8 FROM THE HEADINGS ON THEM. I HAVEN'T READ  
9 ANY FARTHER. THEY SEEM TO ADDRESS MY ACTIONS  
10 AND BELIEFS, REAL OR IMAGINARY.

11 I WOULD INVITE FOLKS TO STOP SUBMITTING  
12 SUCH THINGS TO ME. I WILL NOT BE READING  
13 THEM. I CANNOT CONSIDER THEM AS PART OF THIS  
14 CASE.

15 IF ANYONE BELIEVES THEY HAVE INFORMATION  
16 WHICH IS RELEVANT TO THIS CASE, PLEASE BRING  
17 IT TO THE ATTENTION OF THE PARTIES, NOT  
18 DIRECTLY TO THE COURT.

19 THIS MATTER IS HERE BEFORE THE COURT ON  
20 MICROSOFT'S MOTION FOR A PRELIMINARY  
21 INJUNCTION. THE DEFENDANTS, GOOGLE AND  
22 DR. LEE, HAVE ALSO REQUESTED THAT THE COURT  
23 DISSOLVE THE TEMPORARY RESTRAINING ORDER  
24 PREVIOUSLY ISSUED ON JULY 28TH OF THIS YEAR.

25 AS YOU KNOW, THIS CASE INVOLVES

1 ALLEGATIONS BY MICROSOFT THAT CERTAIN ASPECTS  
2 OF DR. LEE'S EMPLOYMENT AT GOOGLE VIOLATE THE  
3 NONCOMPETITION CLAUSE IN THE AGREEMENT HE  
4 SIGNED ON AUGUST 8TH OF 2000, WHEN HE BEGAN  
5 WORKING IN REDMOND.

6 IT IS WELL ESTABLISHED IN WASHINGTON  
7 THAT COVENANTS NOT TO COMPETE UPON  
8 TERMINATION OF EMPLOYMENT ARE ENFORCEABLE IF  
9 THEY ARE REASONABLE.

10 IN THE ORDER I AM ISSUING TODAY, AFTER  
11 THAT INTRODUCTORY LANGUAGE, PAGES TWO THROUGH  
12 FIVE ARE SIMPLY A LISTING OF THE EVIDENCE AND  
13 DOCUMENTS AND OTHER SUBMISSIONS I HAVE  
14 REVIEWED IN CONNECTION WITH THIS MATTER.

15 THE RELIEF MICROSOFT SEEKS AT THIS STAGE  
16 MIRRORS IN MANY WAYS THE RELIEF IT SEEKS AT  
17 TRIAL. THE BURDEN ON MICROSOFT IS TO  
18 DEMONSTRATE THAT IT HAS A CLEAR LEGAL OR  
19 EQUITABLE RIGHT, A WELL-GROUNDED FEAR OF  
20 IMMEDIATE INVASION OF THAT RIGHT, AND THAT  
21 THE DEFENDANTS' ACTIONS ARE RESULTING IN OR  
22 WILL RESULT IN ACTUAL AND SUBSTANTIAL INJURY  
23 TO MICROSOFT.

24 SINCE THE ENTRY OF THE TRO, THE  
25 DEFENDANTS HAVE, BOTH IN WRITING AND IN OPEN

1 COURT, OFFERED TO STIPULATE TO CERTAIN  
2 RESTRICTIONS ON THEIR ACTIVITIES THAT MIGHT  
3 COMPETE WITH MICROSOFT. MICROSOFT HAS  
4 DECLINED TO JOIN THAT STIPULATION. SINCE  
5 MICROSOFT IS NOT REQUIRED TO JOIN THE  
6 STIPULATION, WE MUST GO THROUGH THIS EXERCISE  
7 BASED ON THE EVIDENCE SUBMITTED BY THE  
8 PARTIES AT THE HEARING.

9 GOOGLE AND DR. LEE CONTEND THAT HE  
10 SHOULD BE ABLE TO EMPLOY HIS GENERAL  
11 KNOWLEDGE, PERSONAL ATTRIBUTES AND GENERAL  
12 REPUTATION AND SKILLS TO HELP GOOGLE SET UP  
13 AND STAFF A PRODUCT RESEARCH AND DEVELOPMENT  
14 FACILITY IN CHINA.

15 MICROSOFT CONTENDS THAT, WERE DR. LEE TO  
16 DO SO, IT WOULD VIOLATE PARAGRAPH 9 OF THE  
17 AGREEMENT. MICROSOFT CONTENDS THAT DR. LEE  
18 LOST HIS OBJECTIVITY AND BEGAN USING  
19 PROPRIETARY INFORMATION OF MICROSOFT FOR HIS  
20 AND GOOGLE'S BENEFIT EVEN BEFORE HE LEFT HIS  
21 EMPLOYMENT WITH MICROSOFT.

22 THE COURT MAKES THE FOLLOWING FINDINGS  
23 OF FACT AND CONCLUSIONS OF LAW:

24 DR. LEE EXECUTED THE AGREEMENT ON  
25 AUGUST 8TH OF 2000. A QUESTION REMAINS FOR

1 TRIAL WHETHER INDEPENDENT CONSIDERATION

2 EXISTS TO SUPPORT THE AGREEMENT.

3 THE AGREEMENT DOES NOT CONFER TO

4 MICROSOFT ANY RIGHT TO CONTROL DR. LEE'S

5 PUBLIC IMAGE OR PERSONAL RELATIONSHIPS.

6 IN JUNE OF 2005, DR. LEE MISLED

7 MICROSOFT ABOUT HIS INTENTION TO RETURN TO

8 MICROSOFT FOLLOWING HIS SABBATICAL. HE

9 CONTINUED TO HAVE ACCESS TO MICROSOFT'S

10 PROPRIETARY INFORMATION AFTER HE DECIDED TO

11 LEAVE AND JOIN ONE OF MICROSOFT'S DIRECT

12 COMPETITORS. HE BEGAN ASSISTING GOOGLE WHILE

13 STILL EMPLOYED AT MICROSOFT, AND CONFUSED THE

14 DIFFERENCE BETWEEN THE DISCRETION GIVEN HIM

15 TO DISCLOSE MICROSOFT'S CONFIDENTIAL

16 INFORMATION FOR THE BENEFIT OF MICROSOFT AS

17 PART OF HIS EMPLOYMENT AND DISCLOSING SUCH

18 CONFIDENTIAL INFORMATION FOR HIS OWN BENEFIT

19 OR FOR THE BENEFIT OF ANOTHER.

20 DURING HIS EMPLOYMENT WITH MICROSOFT,

21 DR. LEE WORKED ON PRODUCTS, SERVICES OR

22 PROJECTS REGARDING INTERNET SEARCH, DESKTOP

23 SEARCH, MOBILE SEARCH, NATURAL LANGUAGE

24 PROCESSING AND SPEECH TECHNOLOGIES. HE

25 RECEIVED CONFIDENTIAL, PROPRIETARY OR TRADE

1 SECRET INFORMATION WITH RESPECT TO  
2 MICROSOFT'S RECRUITING STRATEGIES AND  
3 RESEARCH AND DEVELOPMENT IN CHINA,  
4 MICROSOFT'S GOVERNMENT RELATIONS IN CHINA,  
5 AND OTHER MATTERS.

6 GOOGLE'S USE OF DR. LEE TO ENGAGE IN  
7 RECRUITING ACTIVITIES RELATED TO GOOGLE'S  
8 PLANNED RESEARCH AND DEVELOPMENT FACILITY IN  
9 CHINA PENDING TRIAL IN JANUARY OF 2006, DOES  
10 NOT VIOLATE THE AGREEMENT, PROVIDED DR. LEE  
11 DOES NOT RECRUIT FROM MICROSOFT OR USE ANY  
12 CONFIDENTIAL INFORMATION FROM MICROSOFT.

13 AS FOR CONCLUSIONS OF LAW, IF  
14 INDEPENDENT CONSIDERATION IS ESTABLISHED AT  
15 TRIAL, WHICH LIKELY IT WILL BE, THE AGREEMENT  
16 PROVIDES MICROSOFT WITH CLEAR LEGAL OR  
17 EQUITABLE RIGHTS ENFORCEABLE UNDER WASHINGTON  
18 LAW. AT ISSUE AT TRIAL WILL BE THE SCOPE OF  
19 THOSE RIGHTS UNDER THE AGREEMENT.

20 I FIND THAT PARAGRAPH 9 IS REASONABLY  
21 NECESSARY TO PROTECT MICROSOFT'S LEGITIMATE  
22 BUSINESS INTERESTS.

23 THE DEFENDANTS' STIPULATION IS NOT A  
24 SUBSTITUTE FOR PLAINTIFF'S REQUEST FOR  
25 INJUNCTIVE RELIEF, ESPECIALLY, AS HERE, THE

1 STIPULATION WAS OFFERED AFTER THE LAWSUIT  
2 BEGAN AND THE COURT ISSUED THE TEMPORARY  
3 RESTRAINING ORDER.

4 EXCEPT AS TO CERTAIN ACTIVITIES IN  
5 CHINA, THE COURT IS SATISFIED THAT MICROSOFT  
6 HAS ESTABLISHED A CLEAR LEGAL OR EQUITABLE  
7 RIGHT, A WELL-GROUNDED FEAR OF IMMEDIATE  
8 INVASION OF THAT RIGHT, AND THE EQUITIES  
9 DICTATE A PRELIMINARY INJUNCTION, DESPITE THE  
10 OFFER OF A STIPULATION.

11 MICROSOFT, HOWEVER, HAS NOT SUFFICIENTLY  
12 SHOWN THAT IT HAS A CLEAR LEGAL OR EQUITABLE  
13 RIGHT TO ENJOIN DR. LEE, PENDING TRIAL, FROM  
14 ESTABLISHING AND STAFFING A GOOGLE  
15 DEVELOPMENT FACILITY IN CHINA, OR AT LEAST  
16 CERTAIN ASPECTS OF THAT WORK.

17 THIS IS BASED ON THE FACT THAT THE  
18 GENERAL ACTIVITIES OF DR. LEE AT MICROSOFT  
19 SINCE 2000 REGARDING CHINA AND RECRUITING  
20 EFFORTS IN CHINA ARE NOT A PROJECT WITHIN THE  
21 MEANING OF THE AGREEMENT. DUE TO THE PUBLIC  
22 POLICY IMPLICATIONS, ANY BROADER  
23 INTERPRETATION OF THE TERM "PROJECT" IN THE  
24 AGREEMENT TO INCLUDE SUCH ACTIVITIES WOULD  
25 RAISE SIGNIFICANT QUESTIONS ABOUT THE



1 ENFORCEABILITY OF THAT PORTION OF THE  
2 AGREEMENT.

3 PENDING TRIAL OF THIS MATTER, IT IS  
4 ORDERED THAT DR. LEE AND GOOGLE ARE  
5 PRELIMINARILY ENJOINED AS FOLLOWS:

6 DR. LEE IS ENJOINED FROM ACCEPTING  
7 EMPLOYMENT COMPETITIVE WITH OR ENGAGING IN  
8 ACTIVITIES COMPETITIVE WITH ANY PRODUCT,  
9 SERVICE OR PROJECT ON WHICH HE WORKED OR  
10 ABOUT WHICH HE LEARNED CONFIDENTIAL OR  
11 PROPRIETARY INFORMATION OR TRADE SECRETS  
12 WHILE AT MICROSOFT.

13 THIS INCLUDES COMPUTER SEARCH  
14 TECHNOLOGIES, NATURAL LANGUAGE AND SPEECH  
15 TECHNOLOGIES. IT ALSO INCLUDES PARTICIPATION  
16 IN SETTING THE BUDGET OR COMPENSATION LEVELS,  
17 OR DEFINING THE RESEARCH AND DEVELOPMENT TO  
18 BE UNDERTAKEN AT GOOGLE'S PLANNED RESEARCH  
19 AND DEVELOPMENT FACILITY IN CHINA.

20 GOOGLE IS SIMILARLY PRELIMINARILY  
21 ENJOINED.

22 WHAT THE COURT MEANS BY THAT IS THAT  
23 DR. LEE MAY INTERVIEW AND ASSIST IN  
24 RECRUITMENT FOR THE FACILITY IN CHINA. HE  
25 MAY ASSIST SITING THAT FACILITY IN CHINA. HE

1 MAY MEET WITH FACULTY IN CHINA ONLY REGARDING  
2 RECRUITMENT FOR THAT FACILITY. HE MAY MEET  
3 WITH GOVERNMENT OFFICIALS IN CHINA, TO THE  
4 EXTENT THAT IS NECESSARY, TO ESTABLISH,  
5 LICENSE AND SITE THE FACILITY.

6 HE IS NOT TO HAVE CONTACT WITH THOSE  
7 GOVERNMENT OFFICIALS OR UNIVERSITY OFFICIALS  
8 REGARDING SOFTWARE DEVELOPMENT OR OTHER  
9 RESEARCH PROJECTS OF GOOGLE PENDING TRIAL.

10 DR. LEE AND GOOGLE ARE, OF COURSE,  
11 ENJOINED FROM DISCLOSING OR MISAPPROPRIATING  
12 ANY TRADE SECRETS OR CONFIDENTIAL INFORMATION  
13 OF MICROSOFT.

14 DR. LEE, AS THE AGREEMENT PROVIDES, IS  
15 ENJOINED FROM SOLICITING ANY OF MICROSOFT'S  
16 EMPLOYEES TO JOIN GOOGLE.

17 ALL PARTIES ARE ENJOINED FROM DESTROYING  
18 ANY DOCUMENTS OR FILES OF ANY KIND THAT  
19 RELATE TO THIS MATTER.

20 MICROSOFT SHALL MAINTAIN THE CURRENT  
21 INJUNCTION BOND IN PLACE AFTER THE TRO.

22 THE TRO IS SUPERSEDED BY THIS  
23 PRELIMINARY INJUNCTION. THEREFORE,  
24 DEFENDANTS' MOTION TO DISSOLVE THE TRO IS  
25 MOOT AT THIS POINT.

1 THE BAILIFF HAS COPIES OF THE  
2 PRELIMINARY INJUNCTION I HAVE JUST  
3 SUMMARIZED. SHE WILL MAKE THEM AVAILABLE TO  
4 THE PARTIES AND THE PUBLIC.

5 WE ARE IN RECESS UNTIL THE TRIAL IN  
6 JANUARY.

7 (RECESS.)

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1 STATE OF WASHINGTON )  
2 ) SS. REPORTER'S CERTIFICATE  
3 COUNTY OF KING )  
4  
5 I, APRIL M. LAINE, ONE OF THE OFFICIAL COURT  
6 REPORTERS OF THE SUPERIOR COURT OF THE STATE OF  
7 WASHINGTON, IN AND FOR THE COUNTY OF KING, DO HEREBY  
8 CERTIFY THAT THE VERBATIM REPORT OF PROCEEDINGS IN THE  
9 FOREGOING CAUSE WAS ORDERED VERBALLY BY DENNIS TESSIER  
10 AND SCOTT RIEWERTS ON THE 13TH DAY OF SEPTEMBER,  
11 2005.

12  
13 I FURTHER CERTIFY THAT I DELIVERED A COPY OF SAID  
14 VERBATIM REPORT OF PROCEEDINGS TO MR. TESSIER AND  
15 MR. RIEWERTS ON THE 15TH OF SEPTEMBER, 2005, THE  
16 ORIGINAL BEING RETAINED BY ME.

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22 \_\_\_\_\_  
23 APRIL M. LAINE  
24 OFFICIAL COURT REPORTER  
25